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No. 95-891

Supreme Court, U.S.  
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In The  
**Supreme Court of the United States**  
October Term, 1995

STATE OF OHIO,

*Petitioner,*

v.

ROBERT D. ROBINETTE,

*Respondent.*

◆  
On Writ Of Certiorari  
To The Ohio Supreme Court  
◆

REPLY BRIEF OF PETITIONER  
◆

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## ARGUMENT

The Respondent makes several arguments in his brief that require a response.

The Respondent is on firm ground in arguing, as he does throughout a significant portion of his brief, that a police officer may not detain a person without the justification of an objectively reasonable belief that the person is, or is about to be, involved in criminal conduct. However, to make this argument is to miss the point. The issue in this case is whether a court should presume that a motorist has been illegally seized when, after the conclusion of the business of a traffic stop, a police officer asks the motorist additional questions, or whether the court should instead apply the totality of the circumstances test to determine if a reasonable person in the motorist's position would have believed that he was free to leave or to otherwise refuse to cooperate. The Respondent takes as established the issue that is to be resolved – was Robinette detained or coerced when he allowed the search of his car? The Petitioner's position is that the totality of the circumstances test is sufficiently flexible and sensitive to separate unlawful seizures from consensual encounters. *Michigan v. Chesternut*, 486 U.S. 567, 574 (1988). Thus, the Petitioner's complaint is not with the unassailable principle that a police officer must not detain an individual without reasonable cause to believe that he is committing or about to commit a crime, but with the application of a bright-line test that decrees that detention or coercion occurs whenever an officer talks to a motorist after a traffic stop, unless the officer had informed the motorist that he is free to go.

The Respondent also argues that a proper application of the totality of the circumstances test would require this Court to find that he did not voluntarily choose to allow the search of the car, but merely acquiesced to the officer's suggestion. This argument asks this Court to revisit the factual findings of the trial court. In evident furtherance of this portion of his argument, Respondent suggests that this Court may undertake an independent examination of the "facts, findings and the record." (Respondent's Brief at 10.) In *Ornelas v. United States*, 1996 U.S. Lexis 3391, this Court held that, as a general matter, determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal. However, this Court did not authorize reviewing courts to review findings of historical fact *de novo*:

[A] reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officials.

The trial court found that the officer had made it clear that the traffic matter was over before he asked Respondent any further questions, that the officer was not overbearing in words or conduct and that the Respondent was educated and intelligent. Indeed, the videotape of the encounter and the Respondent's own testimony at the suppression hearing rebut the suggestion that the Respondent was so cowed by the officer or the events that he reasonably believed that compliance was required. The trial court's findings of historical fact are not subject to revision since they are not clearly erroneous.

Respondent also suggests that his cooperation was somehow tainted because the officer planned from the outset to ask for permission to look inside his car. The lawfulness of the stop did not depend on the officer's subjective motivation. *United States v. Whren*, 1996 U.S. Lexis 3720. And as long as the officer did nothing by words or deeds to convey the message that Respondent's cooperation was required, the fact that the officer intended from the start to ask for consent to search is irrelevant to the question of whether a reasonable person in the Respondent's position, under all of the circumstances, would have believed that he was free to go or to refuse to allow the search.

Finally, the Respondent argues that the Ohio Supreme Court's holding is based upon an adequate state ground. *Michigan v. Long*, 463 U.S. 1032, 103 S. Ct. 3469. The Ohio Supreme Court unambiguously stated that the Fourth Amendment to the United States Constitution, as well as the Ohio Constitution, required the application of a bright-line test to separate consensual encounters from illegal detentions when an officer talks to a motorist at the conclusion of a traffic stop. In *Ohio v. Wyant*, 509 U.S. \_\_\_, 113 S. Ct. 2954 this Court granted a writ of certiorari, vacated judgement and remanded the case for further consideration in light of the decision on *Wisconsin v. Mitchell*, 509 U.S. \_\_\_, 113 S. Ct. 2194 when the holding of

the Ohio Supreme Court was presented in virtually identical language.

For these reasons Respondent's arguments fail.

Respectfully submitted,

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